HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos.17329 of 2006 & 130 of 2007

Dated:09.04.2007

W.P.No.17329 of 2006
Between:

The Andhra Pradesh Cooperative Bank Limited, Hyderabad.

…Petitioner.

and

A.P.Cooperative Tribunal, Visakhapatnam and others.

…Respondents

W.P.No.130 of 2007
Between:

M.V.S.Ramakrishna.

…Petitioner.

and

A.P. State Cooperative Bank Limited, Hyderabad and others.

…Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos.17329 of 2006 & 130 of 2007

COMMON ORDER:

These two Writ Petitions arise out of the proceedings in O.A.No.49 of 2006 on the file of the Andhra Pradesh Co-operative Tribunal, Visakhapatnam.

For the sake of convenience, the parties are referred to, as arrayed in W.P.No.17329 of 2006.

The petitioner advanced a sum of Rs.211.922 lakhs to M/s.Chic Aquatics (Private) Limited, Anakapalli, in the year 1994. The 2nd respondent, by name, M.V.S.Rama Krishna, stood as guarantor

and mortgaged some of his properties as security, for repayment of the loan. Alleging that the loan amount was not paid, the petitioner initiated proceedings under Section 71 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act'), before the Deputy Registrar of Co-operative Societies, Hyderabad, the 4th respondent. A recovery certificate, dated 13.01.2000, was issued against the principal borrower and the guarantors. The property of the 2nd respondent was sought to be proceeded against. At that stage, he filed an appeal before the Tribunal against the recovery certificate, dated 13.01.2000. Since there was delay of 2282 days, he filed M.P.No.10 of 2006 for condonation of the same under sub-section (3) of Section 76 of the Act. He pleaded that he came to know about the proceedings, only when his property is sought to be sold and that there is no delay. The petitioner filed a counter-affidavit opposing the application. Through its order, dated 13.06.2006, the Tribunal condoned the delay, on condition that the petitioner pays a sum of Rs.500/-, as costs. W.P.No.17329 of 2006 is filed against that order.

After condoning the delay, the Tribunal numbered the application filed by the 2nd respondent as O.A.No.49 of 2006. Thereafter, it allowed the appeal, on merits, on 29.08.2006 and remanded the matter to the

4th respondent for fresh consideration and disposal. An objection about territorial jurisdiction was also raised. The Tribunal allowed R.P.No.1 of 2006, through its order, dated 21.12.2006. W.P.No.130 of 2007 is filed challenging the said order.

Heard learned counsel for the petitioner, learned Government Pleader for Co-operation and learned counsel for the respondents 2 and 5.

In view of the developments that are referred to above, the matter is now pending adjudication after the stage of condonation of delay. Had the final order passed by the Tribunal on 29.08.2006 in

O.A.No.49 of 2006 remained in force, as on today, W.P.No.17329 of 2006 would have become infructuous, for all practical purposes. However, since the order in O.A., was reviewed, it becomes necessary to deal with the contentions.

The 2nd respondent submitted an application to condone the delay in presenting the O.A., against the recovery certificate, dated 13.01.2000. He pleaded that he came to know about the said proceedings, only when his property was sought to be sold. This allegation was specifically denied by the petitioner by making reference to service of copy of the recovery certificate etc. It is contended by the learned counsel for the

5th respondent that a sale deed was executed in his favour. Even if the Tribunal was convinced about the plea taken by the 2nd respondent, it was under obligation to discuss the points urged by the parties. A cryptic and brief order does not meet the requirement, when the delay is enormous and the parties are seriously at dispute about various acts and omissions. Since valuable rights of the parties are involved, the Tribunal ought to have bestowed its attention to the matter. Any further discussion is likely to have its impact on the further proceedings that may have to be initiated.

For the foregoing reasons, W.P.No.17329 of 2006 is allowed and the order, dated 13.06.2006, passed in M.P.No.10 of 2006 in O.A. (SR)No.496 of 2006, is set aside. The Tribunal is directed to hear and dispose of M.P.No.10 of 2006 afresh, duly taking into account, the contentions advanced on behalf of the parties, uninfluenced by any of the observations made by this Court, or by the Tribunal and the proceedings, that ensued so far. The possession of the property in question shall remain with the 2nd respondent, till the M.P. is disposed of and the further action would depend upon the outcome thereof.

This Court does not find any basis to interfere with the order in R.P.No.1 of 2006, inasmuch as the matter is remanded for

consideration, at the stage of condonation of delay. W.P.No.130 of 2007 is accordingly dismissed, leaving it open to the petitioner to urge all the contentions before the Tribunal at the time of disposal of application in M.P.No.10 of 2006.

There shall be no order as to costs.

Dt.09.04.2007 **L.NARASIMHA REDDY, J**

GJ